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IN THE

Supreme Court of the United States

OCTOBER TERM, 1954

NO. 186

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS, LOCAL UNION NO. 89, INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, A. F. of L., an Unincorporated Labor Union; PAUL W. PRIDDY, JOSEPH BURRELL, STOY DECKER, WILLARD MARPLES, JAMES MALLORY, ALMA HARPER, Individually, and as Representatives of a Class Consisting of Members of General Drivers, Warehousemen and Helpers, Local Union No. 89, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, A. F. of L., an Unincorporated Labor Union,

Petitioners,

v.

THE AMERICAN TOBACCO COMPANY, INC.,

Respondent.

Petition for Writ of Certiorari to the Court of Appeals of Kentucky

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Petition for Writ of Certiorari to the Court of Appeals of Kentucky

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To the Honorable the Justices of the Supreme Court of the United States:

Petitioners pray that a Writ of Certiorari issue to review the judgment of the Court of Appeals of Kentucky entered in the above entitled case on February 5, 1954.

Opinions Below

An opinion was entered by the Jefferson Circuit Court, Chancery Branch, on April 23, 1954, and is unreported. An opinion was entered by the Kentucky Court of Appeals on June 2, 1953, and was modified on a Petition for Rehearing in an order issued February 5, 1954, and is reported, as modified, at 264 S.W. 2d 250.

Jurisdiction

The judgment of the Court of Appeals of Kentucky was entered on June 2, 1953 (R. 155). A Petition for Rehearing was filed by petitioners on August 1, 1953 (R. 170). An opinion and order modifying the opinion of June 2, 1953, and overruling the Petition for Rehearing was entered on February 5, 1954 (R. 175).

On April 23, 1954, an order was signed and entered in the Supreme Court of the United States by Mr. Justice Stanley Reed, extending the time within which to file this Petition for Certiorari to and including July 3, 1954.

The jurisdiction of this Court rests upon 28 U.S.C. §1257 (3).

Questions Presented

1. Does a state court have jurisdiction or power "to compel by injunctive process" union members, engaged in driving common carrier motor vehicles in interstate commerce and covered by a collective bargaining agreement permitting them to respect picket lines, "to cross a picket line advertising a lawful strike" conducted against another employer by other members of that same union, on the sole ground that a refusal to cross such picket line interferes with a duty imposed by state law on common carriers to deliver to all customers without discrimination,[1]

(a) in view of those sections of the Labor-Management

[1] The quotations herein are from the statement of the question as framed by the Kentucky Court of Appeals below (R. 156).

Relations Act of 1947[2] protecting the right of employees to refuse to enter the premises of another employer whose employees are engaged in a lawful strike; or

(b) in view of those sections of the Interstate Commerce Act[3] making it unlawful for any common carrier motor vehicle to subject any person to any unjust discrimination, and giving the Interstate Commerce Commission exclusive and primary authority to determine whether any discrimination has been engaged in, and giving the federal district courts jurisdiction to enjoin such discriminatory activities upon application of the Interstate Commerce Commission?

2. Does a state court have jurisdiction or power to enjoin the use of or to declare illegal an agreement between a common carrier and a union representing its employees, under which such employees are permitted to respect picket lines without fear of discharge, under the circumstances and in view of the considerations set forth in Question 1 above?

Constitutional and Statutory Provisions Involved

The constitutional provision involved is found in the Constitution of the United States, Article VI, second sentence, as follows:

> "This Constitution, and Laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or Laws of any State to the contrary notwithstanding."

Pertinent statutory provisions which are printed in Appendix A, infra, pp. 18-23, are as follows: 29 U.S.C. §157, 61 Stat. 140; 29 U.S.C. §158(b)(4), 61 Stat. 140; 29

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[2] Section 7, the proviso to Section 8(b), Section 13, Section 501(2) and Section 502.

[3] 49 U.S.C.A. §316(d), 316(e) and 322(b).

U.S.C. §163, 61 Stat. 151; §501(2) and 502 of the Labor-Management Relations Act of 1947, 61 Stat. 161, 162; 49 U.S.C. §316(d), 49 Stat. 558, as amended, 54 Stat. 924; 49 U.S.C. §316(e), 49 Stat. 558, as amended, 54 Stat. 924; 49 U.S.C. §322(b), 49 Stat. 564; Kentucky Revised Statutes, §281.600, 281.610, 281.685.

Statement of the Case

Petitioners are a labor organization, General Drivers, Warehousemen and Helpers, Local Union No. 89, International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, AFL, and certain individuals as representatives of a class consisting of members of the abovesaid union (R. 2-3).[4] Respondent American Tobacco Company is engaged in the business of manufacturing and selling cigarettes and other tobacco products (R. 2). It owns and operates a subsidiary in Louisville, Kentucky, known as American Suppliers, Inc. (R. 158). This subsidiary was found by the Jefferson Circuit Court, Chancery Branch, and by the Kentucky Court of Appeals to be so closely related to the respondent that respondent and it must be considered as one operation, one employer, and one distinct entity for the purpose of this action (R. 160). Petitioner Local Union 89 has as members employees of such subsidiary and also employees of various common carriers operating in and out of Louisville, which common carriers were engaged in making deliveries to respondent and such subsidiary (R. 117, 118), as well as to other customers. There was in existence a collective bargaining agreement between Local 89 and such common carriers containing a clause permitting Local 89's members to refuse to cross picket lines established at the premises of

[4] In addition to the certified record, there is a transcript of evidence, containing pp. A-384, taken at a hearing on April 14, 1953, which was certified by the clerk of the Court of Appeals. There are only two references herein to matters contained in the transcript of evidence, which is cited as follows: (Tr. . . .).

customers of such common carriers (R. 119).[5] Local 89 is the certified bargaining representative of the employees of the above mentioned subsidiary (Tr. 225). When the parties were unable to agree upon the terms of an agreement, a duly authorized strike was begun by the petitioning union at this subsidiary plant of respondent in March of 1953 (Tr. 239). Pursuant to the strike a picket line was established at the subsidiary's premises, at or adjacent to the premises where also was located a portion of respondent's operations (R. 4, 5).

As a consequence of this strike, respondent filed a petition in equity in the Jefferson Circuit Court, Chancery Branch on April 4, 1953, alleging that certain picketing activities on the part of petitioners were unlawful under state law and seeking an order restraining petitioners from engaging in such activities in connection with the labor dispute between the parties (R. 2). A temporary restraining order was issued on April 6, 1953 (R. 15-18) granting respondent's request for an order forbidding picketing and other conduct allegedly in violation of Kentucky law. The case was then set down for hearing on the application for permanent injunction on April 14, 1953, (R. 18) at which time evidence was taken on the issues. On April 22, 1954, the trial court entered a judgment (R. 138) granting a permanent injunction which modified the temporary in-

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[5] The clause in question read as follows:

"It shall not be considered a violation of this Agreement for employees covered hereunder to refuse to cross a picket line of a Union or refuse to handle unfair goods. The term unfair goods, as used in this section includes, but is not limited to, any goods or equipment transported, interchanged, handled, or used by any carrier, whether party to this Agreement or not, at whose terminal or terminals or place of business there is a controversy between such carrier or its employees on the one hand and a labor union on the other hand; and such goods or equipment shall continue to be 'unfair' while being transported, handled, or used by interchanging of succeeding carriers whether parties to this Agreement or not, until such controversy is settled."

junction previously issued in various respects.[6] The permanent injunction permitted picketing but enjoined petitioners from maintaining excessive numbers of pickets, from threatening injury to persons or property, from using abusive language, and

> "From causing, aiding or abetting any common carrier or contract carrier unreasonably to discriminate against plaintiff by refusing while remaining an employee thereof, or inducing, encouraging, coercing or otherwise causing or arranging with common or contract carriers or any persons connected therewith to refuse to accept, handle, transport, and deliver, in accordance with their legal and contract obligations, property shipped by or to plaintiff, so long as property is being handled, transported and delivered by or to other customers of such contract or common carriers." (The full order of the trial court is set out in Appendix C.)

The effect of the above quoted portion of the injunction order was to require such of Local 89's members as were employed by common carriers to cross picket lines established at the premises of any customer of any such common carriers engaged in a labor dispute and, in particular, to cross the valid picket line established at respondent's subsidiary's premises by Local 89.[7] No distinction was made

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[6] The complaint was drawn and the temporary injunction had been issued primarily on the theory that a "secondary boycott" was involved. Upon presentation of the evidence at the hearing on the permanent injunction, the trial court found that no secondary activity was involved, but then noted that petitioners' members had no right to interfere with common carriers attempting to make deliveries at respondent's or its subsidiary's place of business by respecting otherwise lawful picket lines established at such premises. On this point the trial court heard additional argument and issued a separate opinion respecting the "common carrier" issue, (R. 136).

[7] An example of the practical construction given a similar decree in this case is seen from the contempt proceedings instituted against certain of petitioner Local 89's members for respecting the picket line established at respondent's subsidiary's premises.

in the decree between common carriers subject to the Interstate Commerce Commission under the Interstate Commerce Act and carriers involved in purely intrastate operations, although it was argued before the Kentucky Court of Appeals on rehearing (R. 170) that the decree was invalid insofar as it involved employees employed by common carriers subject to the jurisdiction of the Interstate Commerce Commission. The record does disclose that various common carriers making deliveries to respondent subsidiary were engaged in interstate commerce, as for example, the common carriers employing the employees involved in the contempt proceedings mentioned in f.n.[7] (R. 34, 143).

Petitioners appealed only from the above quoted portion of the trial court's permanent injunction order to the Court of Appeals of Kentucky.[8] That Court upheld and affirmed the decree of the trial court both on original ap-

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The temporary restraining order above referred to contained a clause reading as follows:

> "From refusing or inducing, encouraging, coercing or otherwise causing or arranging with, the employees of other employees (sic), particularly common carriers, or with such employers, to refuse to accept, handle, transport and deliver in accordance with their legal and contract obligations, property shipped by or to plaintiff."

Certain of petitioner Local 89's members employed by a common carrier respected the picket line at such premises and were found guilty of contempt of court for violating such order (R. 34, 146). These contempt proceedings are not involved in the present case.

Another example of the construction given the above quoted portion of the final decree is seen under a rule to show cause why contempt should not lie for the action of certain members of Local 89 employed by the Middle West Freightways, Inc., a common carrier in refusing to pick up a shipment at respondent's for delivery to Kansas City, Missouri, the refusal being occasioned by the refusal to cross the picket line (R. 143). The rule was respited until May 18, 1953 (R. 145), and the Record does not reveal any further disposition of this matter.

[8] Respondent took a cross appeal on the question of secondary picketing, which appeal was dismissed by the Kentucky Court of Appeals (R. 155) and is not in issue here.

peal (June 2, 1953, R. 156) and on rehearing (February 5, 1954, R. 175). The Kentucky Court of Appeals, in its opinion, held that, under both common and statutory law in Kentucky, common carriers have an absolute duty to make deliveries without discrimination, which duty is interfered with when employees of such common carriers seek or attempt to respect otherwise lawful picket lines established at the premises of customers either by their own or other unions. This duty, the Court found, admitted of no exceptions because of Taft-Hartley, with which Act the Court found no conflict by virtue of the injunction requiring such of petitioners' members as were employed by common carriers to cross picket lines established at the premises of any customer of such common carriers. In this respect the Court stated as follows (R. 164, 5):

> "The appeal here involves the refusal of employees of carriers who happen to belong to Local 89, the bargaining representative of Suppliers' employees, to transport the merchandise of American through the picket line at 17th and Broadway Streets, and this disobedience is not complained of as an unfair labor practice but as a violation of the common law, the constitutional law and the statutory law of Kentucky. More than that, the illegal conduct of the employees could subject them to criminal prosecution. It follows that the portion of the injunction requiring performance of the duty to carry American's goods in no way impairs the right to strike, the right to picket or any other right guaranteed by the federal law or the Constitution of the United States."

In addition, the Court found that the agreement between petitioner Local 89 and various common carriers, permitting petitioners' members to respect picket lines, was invalid as an interference with the common law duty of the common carrier to make deliveries to all customers without discrimination (R. 165). The Court stated in this connection:

> "Finally, the employees of the carriers rely upon a

provision of the agreement between themselves and their employers covering the period from February 1, 1952, to January 31, 1955, to the effect that it shall not be a violation of their contract or a cause for discharge to refuse to go through the picket line of a union or to refuse to handle unfair goods. They insist that this stipulation excuses them from serving American. The legal duty of a common carrier to handle the merchandise of a shipper without discrimination existed long before the contract came into being, and, by like token, employees of common carriers, as long as they voluntarily remain in the hire of their employer, do not have the lawful right to withhold their services from a particular customer who deals with their employer. Where the common carrier and its employees seek by a contractural provision to avoid the responsibility imposed by statute, such a contractural provision is void. Such is the case here."

The Court disposed of the Petition for Rehearing simply by adopting its previous opinion with some minor modifications as more fully set forth in Appendix B. Thus the Court rejected, without opinion, the contention of petitioners, raised specifically on rehearing, that jurisdiction to define duties of interstate common carriers engaged in interstate commerce lies exclusively in the Interstate Commerce Commission under the Interstate Commerce Act. The Court did, however, consider, and pass upon by rejecting, this contention as well as all others made in the Petition for Rehearing (R. 187).

The federal questions sought to be reviewed were presented and disposed of below as follows:

(1) The question of whether, in view of Taft-Hartley, the Kentucky courts had jurisdiction or power to require members of the union who were employees of common carriers to make deliveries was raised on argument of counsel for petitioners, as shown in the record at R. 136-7, whereupon the Jefferson Circuit Court, Chancery Branch, filed a Memorandum Opinion on Terms of Injunction, with pertinent provisions as follows:

> "Plaintiff insists that the threatened action of the members of the Union who are so employed to refuse to make deliveries to it is violative of K.R.S. 281.685, wherein a common carrier (similar provisions are also had for contract carriers) is enjoined against subjecting any person to any unreasonable discrimination, and the penalty provisions of the same chapter, which in effect provide that any person who causes, aids or abets any violation of the above is doing an unlawful act." (R. 136.)

And continuing:

> "Counsel for the Union insists that to require the members of the Union to make these deliveries in spite of their contract agreement to the contrary would amount to involuntary servitude and also a violation of the Taft-Hartley Act.
>
> "On the authority of the above-mentioned provision of the Statute, and on the authority of these two cases considering similar statutes, Burlington Transport Co. v. Hathaway, 12 N.W. (2d) 167, an Iowa case, and Turner v. Zanes, 206 S.W. (2d) 144, a Texas case, the Court is of the opinion that appropriate language should be contained in the permanent injunction restraining any unlawful discrimination. /s/ Stuart E. Lampe, Judge." (R. 137.)

The question was next presented to the Court of Appeals on appeal in petitioner's brief and argument and so considered and decided adversely to petitioners by the said Court of Appeals both on the original appeal (R. 156) and upon rehearing (R. 176, et seq.).

(2) The question of whether or not state courts are without jurisdiction to enjoin employees of carriers from refusing to handle freight of a shipper involved in a labor dispute because of provisions of the Interstate Commerce Act (49 U.S.C. §316(d)(e), 322(b)) was not presented to the Jefferson Circuit Court, Chancery Branch, was not presented to the Kentucky Court of Appeals on the original appeal, but was presented in the Petition for Rehearing (R. 170), and was considered and denied by the Court of

Appeals as per the certificate of Acting Chief Justice Stewart (R. 187).

(3) The question of whether the state court had jurisdiction or power to declare invalid the provisions of the collective bargaining agreement between petitioner Local 89 and various common carriers permitting petitioners' members to respect picket lines was raised before the Jefferson Circuit Court, Chancery Branch, on argument by counsel for petitioners (defendants below) on the injunction order, with said question being decided adversely (R. 137). The question was then presented to the Court of Appeals on appeal in briefs and argument of counsel and was considered by the Court and decided adversely to the petitioner (R. 165).

Reasons for Granting of Writ

Important questions of conflict with and preemption by federal law are presented in this case. The Court of Appeals of Kentucky has decided these questions in a manner contrary to applicable decisions of this Court. The precise questions here involved have never been determined by this Court, but they are of sufficient substance to warrant such determination, dealing as they do with the paramountcy of federal law both in an important aspect of employee rights protected under the Labor-Management Relations Act of 1947 and in an important field of federal regulation of the operation of motor carriers under the Interstate Commerce Act (Title 49 U.S.C.A. §301, et seq.). As will be seen, the state court has undertaken to establish various duties, under state law, of both interstate motor vehicle common carriers and their employees, in spite of the fact that such duties insofar as they are applicable to such employees are in direct conflict with and in deprivation of rights guaranteed under the Management-Labor Relations Act of 1947, and in spite of the fact that jurisdiction to establish such common carrier duties in the first

instance is lodged exclusively, under the Interstate Commerce Act, in the Interstate Commerce Commission.

1. The state court has enjoined the exercise of rights guaranteed and protected under the Labor-Management Relations Act of 1947. Sections 7, 13 and, in particular, the proviso to Section 8(b) insure to employees embraced under the Act the right to respect legitimate picket lines established by fellow union members. This has been expressly so held by the National Labor Relations Board. *Cyril DeCordova & Bros.*, 91 NLRB 1121; *Rockaway News Supply Co.*, 94 NLRB 1056. Appeals in the *Rockaway News* case reached this Court in *NLRB v. Rockaway News Supply Co.*, 345 U. S. 71. While the majority decision therein refrained from expressly passing on the point,[9] the minority decision (p. 81) held that the right to refuse to cross a picket line was one protected by the Act. The minority noted that "habitual respect for union picket lines has long been the practice of union men. This practice has been a prize asset of the unions." The tradition of union men that they respect picket lines established by fellow union members—in this case members of the same local union—is one of the strongest and most deeply rooted in the labor movement. The tradition goes to the very heart of the principle of mutual aid and assistance so vital to the functioning and solidarity of any trade union movement worthy of the name. As pointed out in the *Rockaway* dissent of Justices Black, Douglas and Minton, and as rec-

[9] The majority decision held that regardless of any status that the right to refuse to cross picket lines might have under the Act, that right, like the right to strike, was subordinate to express commitments under an existing collective bargaining agreement so that, where such agreement contained a no-strike clause which required employees to continue their duties without work stoppages, the employer was justified in discharging the employee for refusing to cross a picket line. In the present case, the existing collective bargaining agreement contained a clause, as stated by the court below, "to the effect that it shall not be a violation of their contract or a cause for discharge to refuse to go through the picket line of a union." (R. 119.)

ognized by the Board in the above quoted cases, this tradition and the right of union members, individually or concertedly, to observe it is expressly recognized under the proviso of Section 8(b)[10] and under the general right given all employees under Section 7 of the Act "to assist labor organizations . . . and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection." If this right, of vital importance to organized labor and protected under the federal law, can be enjoined in the state courts under a theory that interstate carriers have an absolute duty under state law to deliver goods to any and all customers regardless of whether any particular customer may be involved in a lawful strike, then an easy method for the avoidance of federal rights has been discovered. This Court, in *Hill v. Florida*, 325 U. S. 538, has made clear that in such cases of head-on conflict between rights protected under the federal law and duties prescribed by the state, the federal law must prevail. See also *Allen-Bradley v. NLRB*, 315 U. S. 740; *NLRB v. Kalamazoo Stationery Co.* 160 F. 2d 465; certiorari denied 332 U. S. 762.

It is to be noted that the right to respect picket lines is, under the state law, flatly and in all circumstances denied, that is, without relation to any unlawful object such as might have been the case had the right been exercised in connection with an unlawfully established picket line or in aid of an unlawful strike. This being so, the argument that the common carrier "duty" established under state law is akin to the various duties imposed by the states upon public utilities is unavailing. In *Amalgamated Association v. Wisconsin Board*, 340 U. S. 383, this Court held that a

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[10] "Sec. 8(b) . . . *Provided*, That nothing contained in this Subsection (b) shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than for his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act."

general proscription on the right of employees of public utilities to strike under any and all circumstances was in conflict with the paramount federal law establishing such right generally. "Creation of a special classification for public utilities is for Congress, not for this Court";[11] and this is equally true if the utility be a common carrier.

2. In any event and regardless of any question of the paramountcy of federal law protecting the right of employees to respect picket lines, it would appear clear that the state court was lacking in jurisdiction and power to attempt to adjudicate, in respect to motor carriers subject to the Interstate Commerce Act, the question of whether there exists some species of duty by state law under which such carriers are bound to make deliveries to any and all customers regardless of any strike circumstances that might be involved. The Interstate Commerce Act makes it unlawful for common carriers by motor vehicle, engaged in interstate commerce, to subject any customer to unjust or unreasonable discrimination (49 U.S.C. 316(d)). It further provides (Sec. 316(e)) that the Interstate Commerce Commission shall, upon complaint of an unjust discrimination, make an investigation and a determination as to whether there is in fact any unjust, unreasonable, or discriminatory practices engaged in. Section 322(b) then provides for enforcement of orders or regulations of the Commission in this respect by injunctive process in the district courts of the United States upon application of the Commission. A long line of cases[12] has established the principle that the Interstate Commerce Act represents a

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[11] *Amalgamated Association v. Wisconsin Board, supra,* at 392.

[12] *Armour & Co. v. Alton R.R. Co.*, 312 U. S. 195; *Mitchell Coal & Coke Co. v. Pennsylvania R.R. Co.*, 230 U. S. 247; *B. & O. Railroad Co. v. U. S., ex rel Pilcum Coal Co.*, 215 U. S. 481; *Texas & P. R. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426, *St. Louis, Brownsville & Mexico Ry. Co. v. Brownsville Navigation Dist.*, 304 U. S. 295; *T. & P. Railway v. American Tie & Timber Co.*, 234 U. S. 138; *Great Northern Ry. Co. v. Merchant's Elevator Co.*, 259 U. S. 285; *Terminal Warehouse Co. v. Pennsylvania Railway Company*, 297 U. S. 500.

comprehensive effort on the part of the federal government to control in all ways and manners the transportation of goods in interstate commerce, to define the duties and obligations of motor carriers engaged in such transportation, and to set up procedures for investigation and determination of alleged violations of their obligations and duties as common carriers. The Act was designed to achieve uniformity in the transportation system and to prevent imposition of conflicting duties and obligations by local regulation. By so doing, Congress has pre-empted the field (other than safety of highways) and has made either state courts or state administrative bodies powerless to act in such field. In *Loomis v. Lehigh Valley R.R. Co.*, 240 U. S. 43, and *Great Northern v. Merchants Elevator Co.*, 259 U. S. 285, this Court made clear that resort to the Interstate Commerce Commission for determination of the administrative question of the discriminatory or unreasonable nature of a carrier's failure or refusal to provide service was an absolute condition precedent to any action being taken in respect to any such alleged discriminatory practices by any other tribunal. See also *Terminal Warehouse Co. v. Pennsylvania R.R. Co.*, 297 U. S. 500.[13] The Congress having taken in hand the particular subject matter of the question of the reasonableness of an interstate motor carrier to refuse or fail to make deliveries into a strike-bound plant, state laws respecting that same subject matter must fall. *Charleston & Carolina R.R. v. Varnville Co.*, 237 U. S. 597; *Missouri Pacific R. Co. v. Porter*, 273 U. S. 341.

The question of the effect on employees' rights to engage in activities protected under the federal law of alleged

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[13] Incidentally, the federal rule is that refusal to deliver because of the existence of a labor dispute is sufficient reason to make the carrier's refusal or failure to deliver a reasonable and non-discriminatory one. See "The Plight of a Strike-Bound Carrier," Charles H. Woods, Minnesota Law Review, February, 1949, pp. 255-282; *Montgomery Ward & Co. v. Chicago M. S. P. & P. Railway*, 268 I.C.C. 257; *Consolidated Freightways*, 42 M.C.C. 225.

duties imposed upon either rail or motor vehicle common carriers by virtue of state statute or common law has been the subject of considerable litigation in the lower courts in the last several years. See e.g. *Montgomery Ward & Co. v. The Northern Pacific Terminal Co. of Oregon, et al.*, 23 C.C.H. Labor Cases ¶67,713; *S. E. Overton Company v. International Brotherhood of Teamsters, etc.*, 115 F. Supp. 764. There has been an increasing attempt on the part of certain groups of employers to invoke such state laws as a means of enjoining heretofore lawful and peaceful labor activities. A determination of the effect of such state laws and of the jurisdiction of the state courts to resolve conflicting rights in this field has become of transcending importance in the field of labor relations. All these issues are presented under the facts and determinations in this case. A resolution of such issues is of vital importance to the proper conduct of union activities and to the proper administration of both the Labor-Management Relations Act of 1947 and the Interstate Commerce Act.

3. A final important question of federal law determined by the court below and in conflict with applicable decisions of this Court is involved in its holding, incidental to its determinations discussed in Points 1 and 2 above, that an agreement duly entered into between various of common carriers and the local union herein, under which such members were accorded the right to respect picket lines without fear of discharge or other retaliation, was invalid and unenforceable. This Court, in the *Rockaway News* case, *supra*, and the Second Circuit in *Rabouin v. NLRB*, 195 F. 2d 906, has specifically upheld the validity of such agreements under the Labor-Management Relations Act of 1947. In *Rockaway* this Court stated in this respect that the proviso to Section 8(b) above referred to "clearly enables the contracting parties to embody in their contract a provision against requiring an employee to cross a picket line if they so agree." Accordingly, the legal considerations applicable in Points 1 and 2 above are relevant here, and

it would appear that the Court of Appeals of Kentucky is clearly in error in holding that the state law respecting the alleged duties of common carriers to maintain deliveries in spite of strike difficulties of particular customers supersedes the rights of union and employers subject to the federal labor act to enter into the agreements in question. Such clauses are an important subject matter of collective bargaining and are found in numerous agreements of various labor organizations throughout the country. It cannot be assumed, absent express indication of Congressional intent (see e.g. Section 14(b)), that Congress left to the states jurisdiction to legislate concerning that particular aspect of collective bargaining.

In any event, jurisdiction to determine the legality of such agreements would appear to be solely within the province of the National Labor Relations Board or of the federal courts seeking, upon application of the Board, to enjoin practices alleged to be in violation of Section 8(b)(4). See *Rabouin, d.b.a. Conway's Express*, 87 NLRB 972; *Pittsburgh Plate Glass Co.*, 105 NLRB No. 120; *Garner, et al. v. Teamsters Local Union 776*, 346 U. S. 485; *Building Trades Council, et al. v. Kinard Construction Co.*, 346 U. S. 933.

CONCLUSION

For the foregoing reasons it is respectfully requested that this Petition for Writ of Certiorari be granted.

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Respectfully submitted,

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